

**Case No. 23-55714**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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CHAYA LOFFMAN, ET AL.,

*Plaintiffs – Appellants,*

v.

CALIFORNIA DEPARTMENT OF EDUCATION, ET AL.,

*Defendants – Appellees.*

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On Appeal from the United States District Court for the  
Central District of California

District Court No. 2:23-cv-001832-JLS-MRW

The Honorable Josephine L. Staton

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**THE STATE-APPELLEES’**

**MOTION FOR EXTENSION OF TIME TO FILE**

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Pursuant to Federal Rule of Appellate Procedure 26(b) and Ninth Circuit Rules 27-1 and 31-2.2, Defendants-Appellees the California Department of Education and Tony Thurmond in his Official Capacity as the State Superintendent of Public Instruction (collectively, the “State-Appellees”) respectfully request an extension from the initial/current due date of November 22, 2023 until January 8, 2024 to file their Answering Brief. In support of their motion, the State-Appellees have attached a Declaration of Thomas Prouty and on the basis of that Declaration state:

1. Pursuant to this Court’s August 16, 2023 Order (Dkt. 2), Appellants’ Opening Brief was originally due on September 11, 2023. On August 22, 2023, Appellants moved for a 30-day extension of time to file their Opening Brief. (Dkt. 9.) The State-Appellees consented to the requested relief, and the motion was granted on August 29, 2023, which made the Opening Brief due by October 1, 2023. On September 26, 2023, Appellants moved for an additional 14-day extension of time to file their Opening Brief. (Dkt. 11.) The State-Appellees consented to the requested relief, and the motion was granted on October 10, 2023, which made the Opening Brief due October 25, 2023 and the State-Appellees’ Answering Brief due November 22, 2023. (Dkt. 12.)

2. Appellants filed their Opening Brief on October 25, 2023. (Dkt. 13.) The Opening Brief is 62 pages, 13,981 words, and its Statement of Issues identifies 6 issues. (*Id.*)
3. On November 1, 2023, nine (9) separate amicus briefs were filed in support of Appellants. (Dkts. 20, 21, 22, 23, 24, 26, 34, 35, 36.)
4. The State-Appellees request an extension of time to file their Answering Brief from the initial due date of November 22, 2023 (the day before Thanksgiving) until Monday, January 8, 2024 (47 days from the original/current due date). This is the State-Appellees' first request for an extension of time in this appeal.
5. The State-Appellees have been represented in this action by their undersigned counsel, who is also responsible for a number of preexisting litigation deadlines in other cases in the coming weeks, including:
  - a. A dispositive motion hearing on November 7, 2023, requiring travel from Sacramento to Los Angeles, in *S.F., et al. v. State of Calif., et al.*, Los Angeles Superior Court, Case No. 22STCCP04310.
  - b. Oral argument in the California Court of Appeals on November 17, 2023, requiring travel from Sacramento to Orange County, in *Orange County Bd. of Educ. v. Mijares, et al.*, Fourth Appellate District, Division Three, Case No. G061717.

- c. Preparation and filing of a dispositive motion by December 1, 2023  
in *Woolard v. Thurmond, et al.*, Case No. 23-cv-02305 (E.D. Cal.).
6. Despite the State-Appellees' continued diligence, there is substantial need for the requested extension due to the Opening Brief's size and scope (§2, above), the number of amicus briefs that have been filed (§3, above), and their counsel's preexisting litigation deadlines (§5, above).
7. All parties consent to the relief requested in this motion.
8. The State-Appellees have exercised diligence and will file their Answering Brief within the requested timeframe.
9. No prejudice to any party will result from the granting of this motion.
10. The court reporter is not in default on any designated transcripts.
11. For the foregoing reasons, the State-Appellees respectfully request an Order extending the due date for the Answering Brief until Monday, January 8, 2024.

November 3, 2023

Respectfully submitted,

/s/ Thomas Prouty  
THOMAS PROUTY  
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### **CERTIFICATE OF SERVICE**

I hereby certify that on November 3, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: November 3, 2023

By: /s/ Thomas Prouty  
THOMAS H. PROUTY  
Attorney for the State-Appellees